Public Notice

Public Notice No.	Date:
200100500	**September 30, 2002**

U.S. Army Corps of Engineers
Honolulu District

Reply to:
District Engineer
U.S. Army Corps of Engineers
Building 230
Fort Shafter, Hawaii 96858-5440 Fax: (808)438-4060

Respond by:
N/A

REISSUANCE OF NATIONWIDE PERMITS AND FINAL REGIONAL CONDITIONS

On 15 January 2002, in Part II of the Federal Register (67FR 2020 - 2095), the U.S. Army Corps of Engineers announced the reissuance of all existing Nationwide Permits (NWPs), General Conditions, and definitions with some modifications, and one new General Condition. Nationwide permits are general permits issued on a nationwide basis to authorize minor activities. The NWPs became effective on 18 March 2002 and will expire on March 18, 2007.

In addition, the Honolulu District has developed Regional Conditions in order to provide additional protection for the aquatic environment by ensuring that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. These regional conditions will help ensure protection of high value waters within the District.

For projects that will involve any activity in a stream, tributary, river, lake, ocean, ditch, fishpond, wetland or other water body, a Department of the Army permit may be required. All persons wishing to perform work under the Nationwide permits must provide ***written notification*** to the Corps prior to the start of work. The notification must be in legible writing to the applicable Corps office and should include:

a. The name, address and telephone number of the prospective permittee;

b. The location of the proposed project; including location and vicinity maps. Maps and/or drawings must be on 8 ½"x11" sheets suitable for reproduction.

c. A brief description of the proposed project; its purpose and direct and indirect adverse environmental effects the project would cause;

d. Where required by the terms of the NWP, a delineation of affected special aquatic sites, including wetlands.

e. A statement that the prospective permittee has contacted:

(1) The U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding the presence of any federally listed (or proposed for listing) endangered or threatened

species or critical habitat in the permit area that may be affected by the proposed project and any available information provided by those agencies; and

(2) The State Historic Preservation Officer (SHPO) regarding the presence of any historic properties in the permit area that may be affected by the proposed project; and the available information, if any, provided by that agency.

Additional requirements for specific locations are listed below:

1. Projects located in the **State of Hawaii** may require:

   a. A completed Water Quality Certification (WQC) application from the State Department of Health. An application can be found on the internet at: http://www.state.hi.us/health/eh/cwb/forms/pdf-files/cwb-wqc.pdf or you may call (808) 586-4309.

   b. A Coastal Zone Management (CZM) Federal Consistency determination may be required for some activities. For information regarding CZM consistency you may contact Mr. John Nakagawa by telephone at (808) 587-2878 or by internet at jnakagaw@dbedt.hawaii.gov

2. Projects located in **American Samoa** require review by the Project Notification and Review System (PNRS) Board. The Board is comprised of representatives of various agencies and provides guidance and decisions concerning project requirements including WQC and CZM. For further information, contact the Department of Commerce, Ms. Mary Midkiff, PNRS Board Coordinator at telephone (684) 633-5155 or Mr. Peter Peshut of the American Samoa EPA at (684)633-2304.

3. Projects located in **Guam** may require:

   a. A completed Water Quality Certification (WQC) application from the Guam Environmental Protection Agency(EPA). Applications are available by calling the Guam EPA office at (671) 475-1658.

   b. A Coastal Zone Management (CZM) Federal Consistency determination for all activities. For information regarding CZM consistency you may contact the Coastal Zone Management Office at the Guam Bureau of Statistics and Plans at (671) 472-4201.

4. Projects in the **Commonwealth of the Northern Mariana Islands (CNMI)** may require:

   a. A completed Water Quality Certification (WQC) application from the CNMI Department of Environmental Quality.

   b. A Coastal Resources Management Office (CRMO) Permit is required for all activities. For information regarding a CRMO permit you may contact Ms. Becky Lizama at (670) 664-8300. Permit applications are also available on the internet at http://www.crm.gov.mp/print_application.htm.

The 15 January 2002 Federal Register notice is available at the Corps of Engineers Honolulu District, Regulatory Branch, Building 230, Fort Shafter, Hawaii 96858-5440 or on the internet at http://www.usace.army.mil/inet/functions/cw/cecworeg/2002nwps.pdf. Alternatively, World Wide Web users can access the Federal Register through the U.S. Government Printing Office at http://www.access-gpo.gov/su_docs/aces/aces140html.

The Corps has also issued final decision documents for the reissued NWPs. These are available at Corps district offices and on the Internet at http://www.uaces.army.mil/inet/functions/cw/cecwo/reg/nw2002dd/index.htm. These NWP decision documents were supplemented by Division Engineers to address decisions concerning regional conditioning of the NWPs.

For your use and information, attached are the current NWPs, General Conditions and Regional Conditions which must be complied with in order for your project to be verified under the NWPs.

If you have questions concerning DA permit requirements for work conducted in the State of Hawaii or American Samoa, contact any Regulatory Program Manager at the Corps of Engineers, Honolulu District, Regulatory Branch, Telephone (808) 438-9258 or by fax at (808) 438-4060. For work in Guam or CNMI, contact Mr. Frank Dayton at the Guam Regulatory Branch, PSC 455, Box 188, FPO AP 96540-1088, Telephone (671) 339-2108.

Summary Table of Nationwide Permit Regional WQC and CZM Requirements

		HAWAII		GUAM		SAMOA		CNMI	
NWP #	DESCRIPTION	WQ	CZM	WQ	CZM	WQ	CZM	WQ	CZM
1	Aids to Navigation	N	C	N	D	N	D	N	D
2	Structures in Artificial Canals	N	C	N	D	N	D	N	D
3	Maintenance	C	C	D	D	D	D	D	D
4	Fish Harvesting Device	C	C	D	D	D	D	D	D
5	Scientific Measuring Devices	C	C	C	D	D	D	D	D
6	Survey Activities	C	C	D	D	D	D	D	D
7	Outfall Structures	D	C	D	D	D	D	D	D
8	Oil & Gas Structures	N	D	N	D	N	D	N	D
9	Anchorage Area Structures	N	C	N	D	N	D	N	D
10	Mooring Buoys	N	C	N	D	N	D	N	D
11	Temporary Recreational Structures	N	C	N	D	N	D	N	D
12	Utility Line Activities	C	C	D	D	D	D	D	D
13	Bank Stabilization	C	D	D	D	D	D	D	D
14	Linear Transportation	C	D	D	D	D	D	D	D
15	USCG Approved Bridges	D	C	D	D	D	D	D	D
16	Return Water from Dredged Matl	C	C	D	D	D	D	D	D
17	Hydropower Projects	D	C	D	D	D	D	D	D
18	Minor Discharges (<25 CY)	C	C	D	D	D	D	D	D
19	Minor Dredging (<25 CY)	C	C	D	D	D	D	D	D
20	Oil Spill Cleanup	D	C	C	D	D	D	D	D
21	Surface Coal Mining	D	D	D	D	D	D	D	D
22	Removal of Vessels	C	C	D	D	D	D	D	D
23	Approved Categorical Exclusions	D	C	D	D	D	D	D	D
24	State Administered 404 Programs	N	N	N	D	N	D	N	D
25	Structural Discharges	C	C	D	D	D	D	D	D
26	Reserved								
27	Wetland & Riparian Restoration	D	C	D	D	D	D	D	D
28	Marina Modification	N	C	N	D	N	D	N	D
29	Single Family	D	D	D	D	D	D	D	D
30	Moist Soil Management	D	C	D	D	D	D	D	D
31	Maintenance of Exstg Flood Control	C	C	D	D	D	D	D	D
32	Completed Enforcement Actions	D	D	D	D	D	D	D	D
33	Temporary Construction & Access	C	C	D	D	D	D	D	D
34	Cranberry Production Activities	D	N	D	D	D	D	D	D
35	Maintenance Dredging of Basins	N	C	N	D	D	D	N	D
36	Boat Ramps	C	C	D	D	D	D	D	D
37	Emergency Watershed Projects	D	C	D	D	D	D	D	D
38	Toxic Waste Cleanup	C	C	C	D	D	D	D	D
39	Residential, Commercial, Etc.	D	D	D	D	D	D	D	D
40	Agricultural Actvities	D	C	D	D	D	D	D	D
41	Reshaping Existing Ditches	D	C	D	D	D	D	D	D
42	Recreational Facilities	D	D	D	D	D	D	D	D
43	Stormwater Management Facilities	D	EXCL	D	D	D	D	D	D
44	Mining Activities	D	EXCL	D	D	D	D	D	D

D = Individual review required by State agencies

C = 401 or CZM issued with conditions. See attached WQC and CZM certification.

N = No requirement by this agency

EXCL = Excluded due to regional conditions

Honolulu Engineer District
Regional Conditions
(2002 Re-issuance of the Nationwide Permits)

REGIONAL CONDITION 1 (Geographical Exclusions)

The following geographic areas and waters of the U.S. are excluded from coverage by the indicated NWPs.

1. Anchialine Pools and Montane Bogs (NWPs 7, 12, 14, 18, 39, 40, 41, and 42).

2. Designated Critical Resource Waters and adjacent wetlands (pursuant to General Condition 25), as well as American Heritage Rivers, National Wildlife Refuges, and State Marine Life Conservation Districts (including Marine Preserve Areas in Guam). However, a discharge may be authorized in National Wild and Scenic Rivers if the activity complies with General Condition 7 or in designated critical habitats for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the U.S. Fish and Wildlife Service or National Marine Fisheries Service, whichever agency has jurisdiction, has concurred in a determination of compliance with this condition (NWPs 7, 12, 14, 39, 40, and 42).

3. Kihei Wetlands - The area located on Maui between the Mokulele Hwy and Kilohana Drive, extending from the Piilani Highway to the ocean. (NWPs 7, 39, 40, 41, and 42).

4. State of Hawaii (NWP 43 and 44).

5. Commonwealth of the Northern Mariana Islands, Territory of Guam and Territory of American Samoa (NWPs 29, 39, 41, 42, 43, 44).

REGIONAL CONDITION 2 (Notification)

Notification to the District Engineer in accordance with General Condition 13* is required for all discharges of fill into the waters of the U.S. exceeding 1/20 acre under NWPs 3, 4, 5, 6, 12, 13, 14, 16, 18, 19, 22, 25, 27, 31, 33, 36, 38, 39, 40, 41, and 42.

Within the CNMI, Guam and American Samoa, notification to the District Engineer in accordance with General Condition 13 is required for all discharges into the waters of the United States (NWPs 12, 13, 14, 27, 28, 35, 36, 38, and 40). Notification is required for all other NWPs where the loss of waters of the United States for a single and complete project exceeds 1/20 acre.

*Note: For projects directly impacting "Impaired Waters" as identified on the most recent CWA Section 303(d) list for the State of Hawaii, the PCN will identify the waterbody as an Impaired Water and, where practicable, shall identify any mitigating measures or BMPs required/recommended by the State for work in these areas.

REGIONAL CONDITION 3 (Acreage Limitation)

Maximum losses of waters of the U.S. under NWPs 7, 40, 41, and 42 in Hawaii are limited to 1/3 acre. Maximum loss of waters of the U.S. under NWP 39 is limited to 1/4 acre. Maximum loss of waters of the U.S. in Guam, American Samoa, and the CNMI for a single and complete project is 1/10 acre (total impact of use of one or more NWP on the same project).

REGIONAL CONDITION 4 (Length Limitation)

The maximum length of fill crossing waters of the U.S. is limited to 200 linear feet under NWPs 12, 13, 14, 39 and 42.

REGIONAL CONDITION 5 (Bank Stabilization)

New rigid structures (ex: pre-cast concrete, concrete rubble masonry, or cast-in-place structures) are excluded from use as bank stabilization to protect restoration of storm-damaged uplands under NWP 3 for both tidal and non-tidal waters of the U.S.

REGIONAL CONDITION 6 (Sidecasting)

For NWPs 12 and 41, sidecast materials must be removed within 30 days of placement within waters of the U.S. Removal of the sidecast material may be phased in accordance with the progress of the work.

REGIONAL CONDITION 7 (Runways and Taxiways)

Runways and taxiways are excluded from NWP 14 authorization in tidal waters of the U.S.

REGIONAL CONDITION 8 (Stream Modification)

Permanent stream channelization and/or the construction of dams that impound waters of the U.S. may not be conducted under NWPs 7, 12, 14, 39, 40, 41, and 42. This condition also applies to NW #18 within the CNMI, Guam and American Samoa.

REGIONAL CONDITION 9 (Compensatory Mitigation)

Upland vegetation buffers cannot be used to offset permanent losses of wetland and aquatic areas authorized under NWPs 12, 14, 39, 40, 42, 43 and 44; they cannot be used for this purpose under any of the NWPs within the CNMI, Guam and American Samoa. Use of vegetated upland buffers is strongly encouraged, however as part of a compensatory mitigation plan that replaces lost wetland and aquatic areas through restoration, enhancement, creation or under exceptional circumstances, preservation of wetland and aquatic areas shall be at a minimum ratio of 1:1.

REGIONAL CONDITION 10 (Mitigation Measures)

A plan employing the techniques listed below shall be implemented to avoid or minimize disturbance to wetlands, riparian areas and beach fringes and/or to re-establish vegetation in such areas when disturbance cannot be avoided.

Areas disturbed during project construction must be revegetated as soon as possible. Erosion protection shall be provided and remain in place until the soil is permanently stabilized.

1) Avoidance and minimization techniques may vary with site conditions and include, but are not limited to, the following:

*Planning construction access and scheduling work to avoid or minimize damage to wetland vegetation.

*Using crane matting or suitable geotextile material to protect vegetation from damage by heavy equipment.

2) Revegetation techniques may vary with site conditions and include, but are not limited to the following:

*Seeding, planting, replacement of reserved ground cover, and/or fertilizing of re-contoured ground to promote re-establishment of natural plant communities. Species to be used for seeding and planting should follow this order of preference: 1) species native to the site; 2) species native to the area; 3) species native to the state; 4) non-native non-invasive, species. Note: non-native species should be used only when native species are not available. The following species are known to be highly invasive and may not be used under any circumstances for revegetation under these NWPs: 1) species included on the USDA APHIS Plant Protection and Quarantine, Federal Noxious Weed List as of 6/7/99; 2) species included on the Hawaii Department of Agriculture, List of Plant Species Designated as Noxious Weeds for Eradication or Control Purposes (6/18/92); and 3) the University of Hawaii, Department of Botany, Distribution Maps of Alien Plants in Hawaii by island, Hawaiian Ecosystems at Risk (HEAR) Project (1/16/01).

REGIONAL CONDITION 11 (Site Identification)

Project limits of authorized sites shall be clearly identified in the field (e.g., by staking, flagging, silt fencing, buoys, existing footprint for maintenance activities, etc.) prior to clearing and construction to ensure that impacts to waters of the U.S. (including wetlands) beyond project footprints are avoided.

REGIONAL CONDITION 12 (Project Timing)

NWP activities must assure that suspended sediment and turbidity do not affect waters beyond the immediate work area. The work shall be conducted in the dry season or when any affected stream has minimal or no flow, to the extent practicable. The work shall be discontinued during flooding, intense rainfall, storm surge, or high surf conditions where runoff and turbidity cannot be controlled. Shoreline work will be done during low tides as much as possible. Silt fences, silt curtains, or other diversion or containment structures shall be installed to contain sediment and turbidity at the work site (a) parallel to and within 10 feet of the toe of any fill, or soil exposed within 25 feet of a standing or flowing waterbody, if the fill site

has a downslope or surface connection to the waterbody; and (b) adjacent to any fill placed or soil exposed within a standing or flowing waterbody. All silt fences, curtains, and other structures must be installed properly and maintained in a functioning manner for the life of the construction period where fill material and exposed soils might cause transport of sediment or turbidity beyond the immediate construction site.

REGIONAL ADVISORY (Definition of Coral Reefs)

For the geographic area regulated by the Honolulu Engineer District, coral reefs are defined as structures made of and by living coral and other animals and plants (including, but not limited to, their calcareous remains, reef flats, slopes, lagoon bottoms, pinnacles, and other coral reef features). This advisory applies to all NWPs.

2002 Nationwide Permit General Conditions

I. Navigation. No activity may cause more than a minimal adverse effect on navigation.

2. Proper Maintenance. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

3. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tideline, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

4. Aquatic Life Movements. No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

5. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

6. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state or tribe in its Section 401 Water Quality Certification and Coastal Zone Management Act consistency determination.

7. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

8. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. Water Quality. (a) In certain states and tribal lands an individua1401 Water Quality Certification must be obtained or waived (See 33 CFR 330.4(c)). (b) For NWPs 12, 14, 17, 18,32,39,40,42,43, and 44, where the state or triba1401certification (either generically or individually) does not require or approve water quality management measures, the permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality (or the Corps determines that compliance with state or local standards, where applicable, will ensure no more than minimal adverse effect on water quality). An important component of

water quality management includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality (refer to General Condition 21 for stormwater management requirements). Another important component of water quality management is the establishment and maintenance of vegetated buffers next to open waters, including streams (refer to General Condition 19 for vegetated buffer requirements for the NWPs).

This condition is only applicable to projects that have the potential to affect water quality. While appropriate measures must be taken, in most cases it is not necessary to conduct detailed studies to identify such measures or to require monitoring.

10. Coastal Zone Management. In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see 33 CFR 330.4(d)).

11. Endangered Species. (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the FWS or NMFS the District Engineer may add species-specific regional endangered species conditions to the NWPs.

(b) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS or their world wide web pages at http://www.fws.gov/r9endspp/endspp.html and http://www.nfms.noaa.gov/prot_res/overview/es.html respectively.

12. Historic Properties. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic

Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. Notification. (a) Timing; where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a preconstruction notification (PCN) as early as possible. The District Engineer must determine if the notification is complete within 30 days of the date of receipt and can request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the District Engineer will notify the prospective permittee that the notification is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified in writing by the District or Division Engineer that an Individual Permit is required; or

(3) Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Notification: The notification must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), Regional General Permit(s), or Individual Permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP (Sketches usually clarify the project and when provided result in a quicker decision.);

(4) For NWPs 7, 12, 14, 18, 21, 34, 38, 39, 40, 41, 42, and 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For NWP 7 (Outfall Structures and Maintenance), the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed;

(6) For NWP 14 (Linear Transportation Projects), the PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the US and a statement describing how temporary losses of waters of the US will be minimized to the maximum extent practicable;

(7) For NWP 21 (Surface Coal Mining Activities), the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan, if applicable. To be authorized by this NWP, the District Engineer must determine that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are minimal both individually and cumulatively and must notify the project sponsor of this determination in writing;

(8) For NWP 27 (Stream and Wetland Restoration Activities), the PCN must include documentation of the prior condition of the site that will be reverted by the permittee;

(9) For NWP 29 (Single-Family Housing), the PCN must also include:

(i) Any past use of this NWP by the Individual Permittee and/or the permittee's spouse;

(ii) A statement that the single-family housing activity is for a personal residence of the permittee;

(iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring 1/4-acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than 1/4-acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(10) For NWP 31 (Maintenance of Existing Flood Control Facilities), the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information identifying the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and,

(iii) Location of the dredged material disposal site;

(11) For NWP 33 (Temporary Construction, Access, and Dewatering), the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources;

(12) For NWPs 39, 43 and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization for losses of waters of the US were achieved on the project site;

(13) For NWP 39 and NWP 42, the PCN must include a compensatory mitigation proposal to offset losses of waters of the US or justification explaining why compensatory mitigation should not be required. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

(14) For NWP 40 (Agricultural Activities), the PCN must include a compensatory mitigation proposal to offset losses of waters of the US. This NWP does not authorize the relocation of greater than 300 linear-feet of existing serviceable drainage ditches constructed in non-tidal streams unless, for drainage ditches constructed in intermittent non-tidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

(15) For NWP 43 (Stormwater Management Facilities), the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with state and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the US. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

(16) For NWP 44 (Mining Activities), the PCN must include a description of all waters of the US adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the US, a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for all aggregate mining activities in isolated waters and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities);

(17) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work; and

(18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

(c) Form of Notification: The standard Individual Permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)-(18) of General Condition 13. A letter containing the requisite information may also be used.

(d) District Engineer's Decision: In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may submit a proposed mitigation plan with the PCN to expedite the process. The District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary. The District Engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then the District Engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an Individual Permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the District Engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the US will occur until the District Engineer has approved a specific mitigation plan.

(e) Agency Coordination: The District Engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

For activities requiring notification to the District Engineer that result in the loss of greater than 1/2-acre of waters of the US, the District Engineer will provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy to the appropriate Federal or state offices (USFWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. As required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to NMFS within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(f) Wetland Delineations: Wetland delineations must be prepared in accordance with the current method required by the Corps (For NWP 29 see paragraph (b)(9)(iii) for parcels less than (1/4-acre in size). The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

14. Compliance Certification. Every permittee who has received NWP verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include:

(a) A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;

(b) A statement that any required mitigation was completed in accordance with the permit conditions; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

15. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the US authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit (e.g. if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the US for the total project cannot exceed 1/3-acre).

16. Water Supply Intakes. No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. Shellfish Beds. No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. Suitable Material. No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the CWA).

19. Mitigation. The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

(a) The project must be designed and constructed to avoid and minimize adverse effects to waters of the US to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland impacts requiring a PCN, unless the District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands as compensatory mitigation, with preservation used only in exceptional circumstances.

(d) Compensatory mitigation (i.e., replacement or substitution of aquatic resources for those impacted) will not be used to increase the acreage losses allowed by the acreage limits of some of the NWPs. For example, 1/4-acre of wetlands cannot be created to change a 3/4-acre loss of wetlands to a 1/2-acre loss associated with NWP 39 verification. However, 1/2-acre of created wetlands can be used to reduce the impacts of a 1/2-acre loss of wetlands to the minimum impact level in order to meet the minimal impact requirement associated with NWPs.

(e) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., easements, deed restrictions) of vegetated buffers to open waters. In many cases, vegetated buffers will be the only compensatory mitigation required. Vegetated buffers should consist of native species. The width of the vegetated buffers required will address documented water quality or aquatic habitat loss concerns. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineers may require slightly wider vegetated buffers to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the Corps will determine the appropriate compensatory mitigation (e.g., stream buffers or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where vegetated buffers are determined to be the most appropriate form of compensatory mitigation, the District Engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland impacts.

(g) Compensatory mitigation proposals submitted with the "notification" may be either conceptual or detailed. If conceptual plans are approved under the verification, then the Corps will condition the verification to require detailed plans be submitted and approved by the Corps prior to construction of the authorized activity in waters of the U.S.

(h) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases that require compensatory mitigation, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

20. Spawning Areas. Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. Management of Water Flows. To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The

activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond preconstruction conditions. Stream channelizing will be reduced to the minimal amount necessary, and the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows. In most cases, it will not be a requirement to conduct detailed studies and monitoring of water flow.

This condition is only applicable to projects that have the potential to affect waterflows. While appropriate measures must be taken, it is not necessary to conduct detailed studies to identify such measures or require monitoring to ensure their effectiveness. Normally, the Corps will defer to state and local authorities regarding management of water flow.

22. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to the acceleration of the passage of water, and/or the restricting its flow shall be minimized to the maximum extent practicable. This includes structures and work in navigable waters of the US, or discharges of dredged or fill material.

23. Waterfowl Breeding Areas. Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. Removal of Temporary Fills. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Except as noted below, discharges of dredged or fill material into waters of the US are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the US may be authorized by the above NWPs in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the USFWS or the NMFS has concurred in a determination of compliance with this condition.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with General Condition 13, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The District Engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

26. Fills Within 100-Year Floodplains. For purposes of this General Condition, 100-year floodplains will be identified through the existing Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

(a) Discharges in Floodplain; Below Headwaters. Discharges of dredged or fill material into waters of the US within the mapped 100-year floodplain, below headwaters (i.e. five cfs), resulting in permanent above-grade fills, are not authorized by NWPs 39, 40, 42, 43, and 44.

(b) Discharges in Floodway; Above Headwaters. Discharges of dredged or fill material into waters of the US within the FEMA or locally mapped floodway, resulting in permanent above-grade fills, are not authorized by NWPs 39, 40, 42, and 44.

(c) The permittee must comply with any applicable FEMA-approved state or local floodplain management requirements.

27. Construction Period. For activities that have not been verified by the Corps and the project was commenced or under contract to commence by the expiration date of the NWP (or modification or revocation date), the work must be completed within 12-months after such date (including any modification that affects the project).

For activities that have been verified and the project was commenced or under contract to commence within the verification period, the work must be completed by the date determined by the Corps.

For projects that have been verified by the Corps, an extension of a Corps approved completion date maybe requested. This request must be submitted at least one month before the previously approved completion date.